

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 21, 2021

Lyle W. Cayce
Clerk

No. 18-60702

MANFREDO M. SALINAS,

Petitioner,

versus

UNITED STATES RAILROAD RETIREMENT BOARD,

Respondent.

Petition for Review of an Order of the
United States Railroad Retirement Board
Agency No. 16-AP-0038

ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

Before HIGGINBOTHAM, ELROD, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Manfredo Salinas seeks review of a decision by the United States Railroad Retirement Board (“Board”) declining to reopen its denial of his 2006 application for a disability annuity. Based on now-abrogated precedent,

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

we previously dismissed his petition for lack of jurisdiction. *Salinas v. R.R. Ret. Bd.*, 765 F. App'x 79, 80 (5th Cir. 2019) (per curiam) (citing *Roberts v. R.R. Ret. Bd.*, 346 F.3d 139, 140 (5th Cir. 2003)). The Supreme Court granted certiorari, overruled our precedent, and remanded for us to consider the merits of Salinas's petition. *Salinas v. R.R. Ret. Bd.*, 141 S. Ct. 691, 697–701 (2021). At our request, the parties filed supplemental briefs. We now deny the petition.

In 2006, Salinas applied for a disability annuity under the Railroad Retirement Act of 1974, 45 U.S.C. § 231a(a)(1).¹ The Board denied his application. Salinas filed an untimely motion for reconsideration, urging that his depression and lack of English had prevented timely filing. The Board denied the motion, ruling Salinas failed to show good cause for the delay. The denial became a final decision of the Board.

In 2013, Salinas filed a new disability annuity application, which the Board granted. Salinas nonetheless appealed to contest the annuity's start date and amount. In doing so, he asked the Board to reopen its decisions on his prior applications, including the 2006 denial. He contended the Board had failed to consider medical records in existence at the time of the 2006 denial. But a hearing officer ruled the benefits calculations were correct and the 2006 decision was ineligible for reopening. The Board affirmed that decision.

Salinas appealed, arguing only that the Board erred by not reopening the 2006 denial. We review that discretionary decision for abuse of discretion. *See Salinas*, 141 S. Ct. at 701 (“The Board’s decision to grant or deny reopening, while guided by substantive criteria, is ultimately discretionary and therefore subject to reversal only for abuse of discretion.”).

¹ A more detailed background is provided in *Salinas*, 141 S. Ct. at 695–96.

The pertinent regulations specify different conditions for reopening a final decision of the Board, depending on when reopening is sought. *See* 20 C.F.R. § 261.2(a), (b).² Because Salinas sought reopening more than four years after the Board's decision, reopening is permitted only if one of ten specified conditions exists. *See* § 261.2(c)(1)–(10). The Board concluded Salinas satisfied none of them.

On appeal, Salinas contends he satisfied § 261.2(c)(7), which permits reopening if the Board's "decision is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made." He argues the Board erred by denying his 2006 reconsideration motion without holding a hearing or requesting further evidence to determine whether his claims had merit. Reopening his case, he argues, would thus allow the Board to "correct . . . an error that appears on the face of the evidence that was considered when the . . . [2006] decision was made." We disagree.

A claimant seeking reconsideration of a benefits decision is not entitled to a hearing. *See id.* § 260.3(b).³ Thus, the Board's not holding a hearing was no error, much less "error that appears on the face of the evidence that was considered when the . . . decision was made." *Id.* § 261.2(c)(7). Nor does the regulation require the Board to request additional

² *See* 20 C.F.R. § 261.2(a) (within twelve months of final decision, reopening allowed "for any reason"); *id.* § 261.2(b) (within four years of final decision, reopening allowed "if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication").

³ "A written request for reconsideration may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided." *Id.* § 260.3(b).

evidence in considering whether to reopen; it only allows the claimant to “provide any additional evidence which is available.” *Id.* § 260.3(b). Salinas has therefore failed to show any abuse of discretion in the Board’s decision not to reopen the 2006 decision denying his disability annuity.

The petition is DENIED.